

Supreme Court, U.S.

E FILED

FEB 1 1979

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

— • —
No. 78-1051
— • —

UNITED STATES OF AMERICA,
PETITIONER,

vs.

SALVATORE FINAZZO and DOMINIC J. LICAVOLI,
RESPONDENTS.

— • —
BRIEF FOR RESPONDENT
DOMINIC J. LICAVOLI IN OPPOSITION
TO GOVERNMENT'S PETITION FOR
WRIT OF CERTIORARI

— • —
S. ALLEN EARLY, JR.
N. C. DEDAY LARENE
Attorney for Respondent
Dominic J. Licavoli
810 Buhl Building
Detroit, Michigan 48226
Telephone: (313) 963-6093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

— • —
No. 78-1051
— • —

UNITED STATES OF AMERICA,
PETITIONER,

vs.

SALVATORE FINAZZO and DOMINIC J. LICAVOLI,
RESPONDENTS.

— • —
**BRIEF FOR RESPONDENT
DOMINIC J. LICAVOLI IN OPPOSITION
TO GOVERNMENT'S PETITION FOR
WRIT OF CERTIORARI**
— • —

COUNTER-STATEMENT OF THE
ISSUE PRESENTED FOR REVIEW

- 1) WHETHER FORCEABLE AND SURREPTITIOUS PHYSICAL INVASION OF BUSINESS PREMISES BY FEDERAL AGENTS FOR THE PURPOSE OF INSTALLING, REPAIR, MAINTENANCE OR REMOVAL OF ELECTRONIC EAVESDROPPING DEVICES IS, ABSENT A VALID CONSENT OR SPECIFIC JUDICIAL AUTHORIZATION, A VIOLATION OF THE FOURTH AMENDMENT.

ARGUMENT

During the government's oral argument before the Sixth Circuit, Assistant United States Attorney, John Newcomer, indicated on the record that it is now the policy of the Department of Justice to seek specific judicial authorization before entering premises for the purpose of installing electronic eavesdropping devices. While Respondent does not concede that federal judges have this power, if the current policy is to seek prior authorization, the facts presented by this case should not arise again. Further, the change in government policy is a way of acknowledging that the procedure followed here was improper.

Because the situation is unlikely to recur, the Court would be dealing with something of purely historical significance. If the Supreme Court does choose to rule on the issue of forcible surreptitious entry to install electronic eavesdropping devices, it should rule on current practices of the Justice Department. To do otherwise would be to minimize the applicability and significance of the decision.

CONCLUSION

The District Court and the Sixth Circuit Court of Appeals came to the correct result in this case. This Court should deny the Government's Petition for Writ of Certiorari.

Respectfully submitted,
S. ALLEN EARLY, JR.
N. C. DEDAY LARENE
810 Buhl Building
Detroit, Michigan 48226
Telephone: (313) 963-6093

Dated: January 31, 1979